

**Town Council Minutes  
Morehead City, North Carolina**

**Tuesday, October 8, 2013**

The Honorable Council of the Town of Morehead City met in Regular Session on Tuesday, October 8, 2013, at 5:30 p.m., in the Municipal Chambers located at 202 South 8<sup>th</sup> Street, Morehead City, North Carolina. Those in attendance were:

MAYOR:	Gerald A. Jones, Jr.
MAYOR PRO-TEM:	Harvey N. Walker, Jr.
COUNCIL:	George W. Ballou
	Bill Taylor
	Demus L. Thompson
	Diane C. Warrender
CITY MANAGER:	David S. Whitlow
CITY CLERK:	Jeanne M. Giblin
CITY ATTORNEY'S OFFICE:	Nelson W. Taylor, III; Derek Taylor; Mike Thomas
OTHERS:	Charlie Cox; Mark Hibbs, Reporter, <u>The Carteret News Times</u> ; Ann Lewis Garner; Jerry Laymann; Jan Willis; Sidney Horton; Andrew Kilnt; Brad Teer; Lou Teer; Neil Burke; S. Buche; Police Captain Bernette Morris; Steve Roberts; Rodney Guigardo; David Gernoske; George Massey; Gurney Mizell; Ann Odell; Ted Odell; Ken Wood; Marion Kuhian; Dawn Gaskill; Public Utilities Director Daniel Williams; Vicky Stumpe, Sam Scudder; Lynn Gullick; Guy Gullick; Scott Maxwell; Christi Maxwell; Sally Lumpkin; Miquel Garner; Rosie McNeill; Gerry M. Garner; Recreation Director Craig Lands; Tom Kies; Ricardo Gomez Lucas Gomez; Katrina Smith; Steve Walters and several others

**I. Regular Meeting Call to Order**

Mayor Jones opened the meeting at 5:30 p.m. Councilman Thompson gave the invocation and all joined in The Pledge of Allegiance.

***Council amended the agenda to include Item V.A. under City Manager's Report to Approve an Agreement with the Big Rock/Blue Marlin Tournament for the acceptance of the gift of the Bronze Marlin Sculpture for the Jib Fountain, \$50,000 donation and other terms for the Jib Project on the Morehead City Waterfront.***

**II. Adoption of the CONSENT AGENDA**

**II.A. Approval of Minutes: Tuesday, September 10, 2013, Regular Meeting**

*Approved the minutes of Tuesday, September 10, 2013, Regular Meeting and dispensed with the reading.*

**II.B. Approve Requests for Release of Overpayment of Ad Valorem Taxes for September 2013, in the Amount of \$1,166.05; and Accept the Finance Director and Tax Collector Reports for September 2013**

*Approved the requests for release of overpayment of ad valorem taxes for September 2013, in the amount of \$1,166.05; and accepted the Finance Director and Tax Collector Reports for September 2013. [Attached to and a part of these minutes by reference are the financial reports.]*

**II.C. Award Contract No. 81 – Pump Station No. 8 Renovation to KBS Construction Company in the Amount of \$238,300.00**

The following bids were received September 17, 2013, for subject Contract No. 81:

KBS Construction Company	\$229,100.00
Thomas Simpson Construction	\$243,349.00

The bid form included various alternate bid items for specific name brands compatible with existing City equipment. Alternate bid items recommended to be included in award of the contract include Gorman Rupp pumps [+\$5,200.00] and Square D electrical gear [+\$4,000.00], thereby increasing the award amount to \$238,300.00. The

City's Engineer, F. Tyndall Lewis of McDavid Associates, Inc., recommended award to the low bidder, KBS Construction Company in the amount of \$238,300.00 based on including alternate bid items for Gorman Rupp pumps and Square D electrical gear. [Attached to and made a part of these minutes by reference is the bid information.] The Public Utilities Committee of the Council recommended the same at their meeting held on October 25<sup>th</sup>.

*Awarded Contract No. 81 – Pump Station No. 8 Renovation to KBS Construction Company in the Amount of \$238,300.00.*

**II.D. Adopt Budget Ordinance Amendment 2013-36 to Adjust the General Fund Budget for the Skating Rink; Administration Salary & Benefit Costs and Replacement of Police Vehicle**

The purpose of this amendment is to adjust the budget as follows:

- To recognize estimated revenue of \$17,000 and expenditures of \$42,000 related to new skating rink activity in downtown in December 2013. Contingency is reduced by \$25,000, the difference between estimated revenue and expenditures.
- To increase the Administration budget \$6,350 for increased salary and benefit costs. Contingency is reduced the same amount.
- To recognize insurance proceeds of \$13,275 related to an accident where a driver rear ended a police vehicle resulting in a total loss. Police expenditures are increased \$22,525 to replace the vehicle. Contingency is reduced \$9,250, the difference between revenue and expenditures.

The Finance and Administration Committee of the Council reviewed the proposed budget amendment at their last meeting and recommended adoption.

*Adopted Budget Ordinance Amendment 2013-36 to Adjust the General Fund Budget for the Skating Rink; Administration Salary & Benefit Costs and Replacement of Police Vehicle.* [Budget Ordinance Amendment 2013-36 is attached to Ordinance Book #7 in the vault.]

***Councilman Ballou MOVED, seconded by Councilman Thompson, and carried unanimously, to adopt the CONSENT AGENDA in one [1] motion.***

**III.A. New Business: Receive Public Comments Regarding 11<sup>th</sup> Street Public Access and Consider Adoption of Ordinance 2013-35 Amending the Town of Morehead City Code of Ordinances, Chapter 10, Offenses, Miscellaneous, Article I, In General, Section 10-25 Launching Boats from Street; Moorings**

City Manager Whitlow reported at the September 10, 2013 Council Meeting that in response to adjoining property owners' concerns about the impact of boat storage and use of the South 11<sup>th</sup> Street beach access, the Public Works Committee of the Council revisited this issue last discussed at their meeting in June. The initial use of the access was for hand launch of kayaks and canoes. The problems include vessels extending over onto private property, unsightliness of the stored boats some of which are not seaworthy and the inability to maintain mowing of both the municipal and private properties due to boats not being removed. South 11<sup>th</sup> Street is the only street end in Morehead City that has traditionally been used for storage of small boats which are launched by hand.

To address these issues, the Public Works staff developed draft rules and registration examples for both Committee and Council review. After reviewing the draft rules, the Public Works Committee agreed the only suitable activity occurring at street ends would be hand launching of small sailboats, canoes and kayaks with no overnight storage of any kind. Consideration was given to adopting an ordinance for the regulations of this property. The recommendation was to keep the proposed ordinance consistent with the other City parks also. The proposed ordinance cites it would be unlawful to allow any boat, vehicle or launching apparatus to remain on any City street end or alley way after sunset and before sunrise.

Since this matter was introduced at the September 10<sup>th</sup> Council Meeting, there has been much discussion, both pro and con regarding the overnight storage of boats at public water accesses.

Mayor Jones advised that Morehead City has never contemplated closing any of the public water accesses. The City is seeking a balance between property owners and maintaining public water accesses for all public use. He explained that a public hearing on this item was not mandated by law, but that the Council wanted to hear from the citizens regarding this matter. He then set the parameters for public comments.

City Manager Whitlow reported that at the Public Works Committee of the Council meeting the property owners on both the west and east sides of the City's property expressed concern about the general poor condition of the area. The Public Works Committee reviewed a process for registering the boats at the 11<sup>th</sup> Street access in addition to the option of eliminating the storage of boats overnight on the site. The proposed ordinance would only eliminate the overnight storage of boats on public water access sites.

Mayor Jones opened the meeting for comments from the public.

Steve Walters of 1102 Shepard Street and owner of 1012 Shepard Street property commented that this was his 15<sup>th</sup> year living at this address. He commented he was familiar with the area and did not feel this is a problem worthy of consideration. There could be occasional problems, but the property boundaries in the area are not marked.

George Massey of P.O, Box 974 Montreat, N.C., commented that the tradition of leaving boats near the shore on common ground was valuable for the community. He stated that the benefits of the fellowship through boating far outweigh the minor inconveniences. He commented that if one buys property near a public access, one should be aware that he/she will be inconvenienced. Boating is a common ground that all share.

David Gernoske of 374 McCabe Road, Newport, N.C., stated he had a 16 foot catamaran and that upon purchasing the boat he looked for a spot to launch. It is difficult to launch this type of boat and it is not practical to go to a public dock. To do so would take up too much time and slow down other boats launching. It takes a long time to rig and launch a catamaran. It is a great privilege to use this area. This is a great thing and it would be a real shame to take it away.

Joey Smith of 906 Evans Street stated that from the age of 8 to 16 he kept a johnboat at the end of south 17<sup>th</sup> Street. This being able to access Bogue Sound played a major part in his life and contributed to his life accomplishments. He is currently a commercial mariner and felt his life had been forged by having a skiff on Bogue Sound as a child.

Andrew Kilnt of 1700 Ivory Gull Drive, stated that this was the only area in the City where the general public can launch. He felt that the City needed to offer environments to the public so that all City people can have an asset. All that a city provides such as parks, ballfields, etc. enrich the city. He requested that the Council consider the proposal submitted by Gunner Stumpe.

Ken Wood of 910 Harrell Avenue felt that the more access the City could provide, the more people will take advantage of it. The citizens need greater water access and more beachfront for boats which are difficult to launch.

Sam Scudder who owns a business at 316B Commerce Drive, but resides in Pine Knoll Shores spoke on behalf of the sailing club which uses South 11<sup>th</sup> Street for sailboat access. He stated he uses the site to rig his sailboat and go sailing with his daughter. He continued that it would not be practical if he had to do all the procedures of launching the type of boat he has every time he uses it and that he could not sail for short intervals. The proposal shuts down all water access street ends and alleyways and it would cost the City more to enforce the proposed ordinance.

Charlie Cox of 803 Lord Granville Drive stated that he made his home here in the area and that the essence of government is freedom. Although the City was not eliminating water access, it was making it harder for people to access the water. He requested that the City find a way to expand public water access.

Norma Jean Gomez of 1806 Evans Street said her children have had a wonderful time on Bogue Sound. The family sails sunfishes and believes in the free, open access to the water. She requested to keep the access open on South 11<sup>th</sup> Street. She said her family is a boating family and that they have several boats in addition to their sailboat which is currently moored in Bogue Sound.

Lynn Gullick of 1409 1/2 Shackleford Street stated she was opposed to the proposed ordinance. She said she sails here and was sorry that the City did not go with the option of a registration process. She requested that the Council consider that option.

Katrina Smith of 2897 Myrtle Street stated she learned how to windsurf and has left her board overnight at the South 11<sup>th</sup> Street access. The users of the boat access have respect for people getting onto the water.

Gurney Mizell of 332 Deer Run, Newport, stated that South 11<sup>th</sup> street is the only access for launching his type of boat. Having this access allows him to teach his grandchildren to sail. He asked the City not to close it.

Ann Lewis Garner, 1412 Shackleford Street stated she is the owner of the property at 1101 Shepard Street which is adjacent to the public beach access. She stated she had pictures to show the damage the boats have done to her property. She stated she has had to call the Morehead City Police Department for boats with no registrations, many outdated, no call numbers listed, etc., to move. She said she has evidence of where the posts of her property line were pulled down. The property has been in her family for over 60 years. The home that was formerly on the property burned down and that is the reason there is no home at the site. She commented that nowhere in Morehead City are boats allowed to be stored overnight. She commented that she was not stopping anyone from sailing. The boat storage racks are 4 feet from her property line and many times boats infringe on her property. She requested that the City adopt the ordinance so boats cannot be left overnight.

Miquel Garner commented that he lived at 1101 Shepard Street until 1996 when his home burnt. Prior to that, he kept the 11<sup>th</sup> Street access mowed and felt he was the constable for that area. He commented that the storage of the boats on the site was not safe.

Barbara Nichols stated that she grew up in Morehead City and cautioned that everyone needs to hear both sides before a decision is made and for the Council to take that into consideration.

Rosie McNeill of 7709 Ware Neck Road in Gloucester, Virginia commented that she has lived here all her life and began sailing when she was eight [8] years old. The property has been in her family for years. She did not advocate for restriction of launching boats, but she wanted people to respect her property. She stated that people have been rude to her family [1101 Shackleford Street property owners].

Steve Horton of 1611 Ivory Gull Drive, Morehead City stated that access to many of the street ends is prohibited by illegally parked cars overnight and this matter should also be addressed by the City.

Gerry Garner of 1412 Shackleford Street commented that this was all about free boat storage, not a lack of water access. He questioned why the City should compete with businesses for boat storage. The water access is there. He advocated that canoes and kayaks can launch there, but overnight storage should not be allowed.

Brad Teer of 200 Bogue Drive stated that he has sailed from the South 11<sup>th</sup> Street water access for seven [7] years and has taught many to sail from there. It is a great water access and an essential part of Morehead City and he hoped it would remain that way in the future.

Roldan Munoz of 1610 Ivory Gull Drive stated he regularly uses the facility and that free pickup sailing is unique. Many people appreciate the overnight storage racks. He commented that it is too difficult to launch a sailboat from “scratch” every time. He

requested that the City give the users of the area an opportunity to help relieve some of the problems and to consider the views of the many over the few.

Charlotte Ferris of 3110 Evans Street spoke about the history of the boat launch area and apologized to the adjacent property owners for the various problems which they are experiencing. She requested that the City try a proposal for at least a year to see if it makes a difference, as inch by inch the spirit of Morehead City is being lost.

Lucas Gomez of 1806 Evans Street stated that he loved to sail and that recently there was a sailing regatta on Bogue Sound with most of the boats coming from the South 11<sup>th</sup> Street access. He said he hoped to continue having access there so more people can enjoy Morehead City's gift.

Dawn Gaskill of 1200 Shackleford Street stated that she grew up in Morehead City and felt privileged to have access to Bogue Sound all her life. She said that she had seen the change in south Florida with the lack of foresight to maintain public water access. She was concerned that little by little more and more public water access is being limited by landscaping and hardscaping. This was a much broader issue and a more comprehensive plan should be undertaken. There was also a need for compromise.

Mayor Jones thanked everyone for their comments and stated that the reason for opening this issue to public comments was that Morehead City wanted input from the community. He continued that water access is paramount to Morehead City and this Council. The City will continue to maintain public water accesses, but was also charged with the protection of individual properties. It is about balance and compromise and the Council strives to do the best it can. The Council opened the dialogue in an effort to create awareness that the adjoining properties to the South 11<sup>th</sup> Street water access were being abused. The Council will consider the suggestions offered.

Councilwoman Warrender spoke about the draft proposal submitted by Gunner Stumpe about regulating the area. She offered a proposal for a draft ordinance which she read into the record. [Attached to and made a part of these minutes by reference is the draft proposal.] She called for regulations to be fair to all and said this issue had brought more notice than anything else since she became a member of the Council. She commented that a fair conclusion for all needed to be considered.

Councilman Walker stated he was not present at the September 10<sup>th</sup> Council meeting and requested a history of the area. He said he heard many of the comments from the people of Pine Knoll Shores, Newport, etc., but he represented the people of Morehead City. The South 11<sup>th</sup> Street water access was set up by the City to be a good and friendly place, not for controversy.

Councilman Taylor suggested reviewing this item at the October 22, 2013, Special Meeting/Work Session of the Council. He requested patience from the residents to give the Council time to work on the situation.

Councilman Ballou commented that the Public Works Committee of the Council had been working on this issue since June when the adjacent property owners came before the Committee with their concerns. He continued that there was never an intention to ever take away the rights of using the area for boat launching; it was to clean up the area and remove the dilapidated boats which had been left on the site. A City government must protect the property rights of everyone.

Councilman Thompson stated he shared the concerns of everyone and this City Council has worked diligently to increase water access. He continued that never has the word been said to "take away". The Council has never worked with a developer to take away public water access. This issue has been a volatile item. The public has likewise got to understand that private property rights were a guarantee of the Constitution also. He stated that when it was necessary for the City to place bollocks at water accesses, it was not to keep people out, but to keep motor vehicles out. He stated that he lives at a street end and at no time was anyone ever not allowed access. The Council wanted to do what was best for everybody, but not everybody would be pleased all the time.

***The Council, by consensus, decided to add this agenda item to the Special Meeting/Work Session called for October 22, 2013 at 9:00 a.m., in the Municipal Chambers located at 202 South 8<sup>th</sup> Street, Morehead City.***

The Council took a ten [10] minute break.

**III.B. New Business: Approve Authorization for Contract Negotiations with MMM Design of Norfolk, Virginia for Space Needs Analysis for Morehead City Properties**

City Manager Whitlow reported that on September 12, 2013, five [5] responses for the Request for Qualifications for the study of the current and future space needs of the City were received. This process was identified during the City's budget discussions as vital to future financial planning as it relates to City owned buildings and properties. All responses were reviewed and scored by City staff utilizing an evaluation process that was outlined in the request for qualifications. The Statement of Qualifications from **MMM Design Group** of Norfolk, Virginia was scored the most favorable. The results of the request and scoring were reviewed with the Public Works Committee of the Council at their recent meeting. After discussion the Committee agreed to recommend that Council approve authorization for contract negotiations with MMM Design for a Space Needs Analysis for Morehead City properties.

Councilman Taylor commented that he had done some preliminary work identifying City-owned properties and ***he MOVED, seconded by Councilman Ballou, and carried unanimously, to approve authorization for contract negotiations with MMM Design of Norfolk, Virginia for Space Needs Analysis for Morehead City Properties.***

**IV. Citizen Requests/Comments**

Norma Jean Gomez of 1806 Evans Street stated she would like to be a part of the solution for the South 11<sup>th</sup> Street water access.

Dawn Gaskill of 1200 Shackleford Street commented that the street ends are really there for public water access. She stated she fully respects the rights of private property owners but a couple of street/alley end areas have been landscaped. She would like to see a comprehensive plan for all the street/alley ends.

George Massey of Montreat, N.C., stated that the concept of a boarder at South 11<sup>th</sup> Street is not clear and he requested that the City obtain a surveyor to survey the property.

Roldan Munoz of 1612 Ivory Gull Drive commented that the people who use South 11<sup>th</sup> Street were not aware of the problems and do not want to encroach on private property. He also stated that for sailors the best wind is in winter and he would not want to have to remove his boat from the site during the winter months.

A citizen commented that the proposed skating rink was dangerous and he heard the system was slicker than ice and that the City should consider the risks.

Ken Wood of 910 Harrell Drive stated that the proposed intentions of closing the beach access from boat storage during the winter season and charging fees are restrictions. In his opinion the Council was coming from the wrong point of view as less restriction and more freedom was necessary.

Richardo Gomez of 1806 Evans Street, stated he was not born in the United States and that he relished the forum that took place tonight. Morehead City citizens are very fortunate to have this ability which is not granted in many other countries.

David Gernoske of 374 McCabe Road, Newport, N.C., said that the City should have an application for the South 11<sup>th</sup> Street boat access and that he has gone sailing during the winter months.

**V. City Manager's Report:**

**V.A. Approve an Agreement with the Big Rock/Blue Marlin Tournament for the Acceptance of the Gift of the Bronze Marlin Sculpture for the Jib Fountain, \$50,000 Donation and Other Terms for the Jib Project on the Morehead City Waterfront**

City Manager Dave Whitlow announced that the Big Rock/Blue Marlin Fishing Tournament provided and Morehead City accepted a bronze marlin sculpture and \$50,000 as a gift to the citizens of Morehead City to be used as part of the Jib Waterfront project. The initial acceptance and agreement was approved by the Council on May 14, 2013, but never executed by the Big Rock. The agreement provided now is the same as was approved in May, however, with the exceptions of the addition of Item #8 whereby it is agreed that the copyright of the sculpture is the property of the artist, Kent Ullberg and the agreeing party is now Crystal Coast Tournament, Inc., not the Big Rock/Blue Marlin Fishing Tournament.

When questioned about the addition of Item #8 in the agreement, City Attorney Nelson Taylor explained that the Crystal Coast Tournament, Inc. is going to reserve the copyright relationship with the artist. The contract between Crystal Coast Tournament, Inc., and Kent Ullberg is about the artist's ability to control the copyright of the marlin statue. Morehead City was not a party to that contract. The rights the Tournament and the artist have under their contract are reserved to them only.

Councilman Thompson was of the opinion that the statue and fountain belong to the citizens of Morehead City and he felt that the licensing agreement should be between the City, Crystal Coast Tournament, Inc. and the artist. Morehead City should be allowed the same rights to the marlin statue as Crystal Coast Tournaments, Inc. Councilman Thompson gave an inference that if the artist should pass away, the rights would go to his heirs. He felt that Morehead City should not be prevented from using the image.

City Attorney Nelson Taylor commented that he was not sure if there was any way that the City could have those same rights as the initial agreement was between the Crystal Coast Tournaments, Inc. and the artist for the statue itself. That right was preserved between the Tournament and the artist.

Councilman Ballou commented that he too feels concern about not having the legal rights to the marlin statue.

***City Attorney Nelson Taylor advised the Council to not adopt the proposed agreement at this time and to explain the reservations and concerns of the Council to Crystal Coast Tournaments, Inc. to get clarification of why Item #8 it is in the current agreement between the Tournament and Morehead City.***

***The Council concurred with the above advice.***

**V.B. Announcement was made by City Manager Whitlow of Special Council Meeting/Work Session to Review City-Owned Properties to be held on Tuesday, October 22, 2013, at 9:00 a.m., in the Municipal Chambers, 202 South 8<sup>th</sup> Street, Morehead City and the also include discussion of the South 11<sup>th</sup> Street Water Access.**

**V.C. Patrol Officer Garrett Hardin**

City Manager Whitlow announced that the police officer who was recently shot during a training exercise was doing quite well and will possibly be discharged from the hospital tomorrow.

**VI. Council Requests/Comments: [See below]**

**VII. CLOSED SESSION per G.S. 143.318.11[a][3] to Approve the CLOSED SESSION Minutes of Tuesday, August 13, 2013; to Receive an Update on the Martin vs. Town of Morehead City Litigation from the City Attorney and to Discuss other Potential Litigation and Possible Contracts with the City Attorney**

***Councilwoman Warrender MOVED, seconded by Councilman Thompson, and carried unanimously, to enter into CLOSED SESSION.***

***Councilman Ballou MOVED, seconded by Councilman Taylor, and carried unanimously, to return to OPEN SESSION.***

***Councilman Ballou MOVED, seconded by Councilman Taylor, and carried unanimously, to approve and seal the CLOSED SESSION Minutes of Tuesday, September 10, 2013.***

**VI. Council Requests/Comments: Coastal Academy for Technology and Science [formerly Cape Lookout High School]**

Councilman Taylor reported that at the last Finance and Administration Committee of the Council Meeting representatives from the Coastal Academy for Technology and Science [formerly Cape Lookout High School] requested payment of funds that they had already expended to enable the school to pass the county fire inspection. He itemized the costs:

Glass replacement	\$200
Floor replacement	\$6,169
Broken light fixtures	\$2,399
Installation of new fire alarm system	\$32,502
Bathroom malfunctions and sanitary issues	\$2,655
<b>TOTAL</b>	<b>\$43,928</b>

Councilman Taylor continued that it was \$43,928 of improvements in addition to their request that Morehead City pay for a dedicated telephone line for the alarm monitoring service and additional smoke detectors in the restrooms.

Councilman Taylor questioned if Morehead City had guaranteed responsibility for any of these systems when the School leased the building. He also commented that the City did not have an executed lease with the School when the City dropped the prices on their rental structure. He continued that the budget and financial statements from the School were supposed to be available to the Committee in light of the School saying it could not afford a rent increase and requests for the above costs to be considered.

Councilwoman Warrender commented that the City forgave the School the outstanding rent owed Morehead City at the time the School was attempting to renew its charter in addition to the City assuming shared utility costs. She also reported that the School never approached the City with regard to the above improvements.

City Manager Whitlow reported that he met with representatives of the School and advised them that the City is only responsible for the roof, walls and foundation of the building and that the School was responsible for those other items. He requested that the City Attorneys draft a lease for a one [1] year period with a one [1] year renewal.

Councilwoman Warrender stated it was her opinion that the Council needed to support the City Manager in this matter.

**VIII. Adjournment**

There being no further business, the meeting adjourned at 8:30 p.m.

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Gerald A. Jones, Jr., Mayor

Attest:

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Jeanne M. Giblin, City Clerk



